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September 28, 2006

***VIA FEDERAL EXPRESS & ELECTRONIC MAIL***

Public Utility Commission of Oregon  
Attention: Filing Center  
550 Capitol Street N.E., Suite 215  
Salem, OR 97301-2551

***Re: UM 1217***

Dear Sir/Madam:

Enclosed for filing are an original and five copies of the Motion to Accept Late-Filed Pleading with attached Response of Verizon Northwest Inc. to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 in the above-referenced docket.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christine F. Zea", is written over a light blue horizontal line.

Christine F. Zea  
Legal Secretary

Enclosures

cc: Service List

1  
2  
3 BEFORE THE PUBLIC UTILITY COMMISSION  
4 OF OREGON

5 UM 1217

6 In the Matter of

7 PUBLIC UTILITY COMMISSION OF  
8 OREGON

9 Staff Investigation to Establish  
10 Requirements for Initial Designation and  
11 Recertification of Telecommunications  
12 Carriers Eligible to Receive Federal  
13 Universal Service Support

MOTION TO ACCEPT LATE-FILED  
PLEADING

13 COMES NOW Verizon Northwest Inc. (“Verizon”), by and through its attorney of  
14 record, and moves the Commission to accept the attached Response of Verizon Northwest Inc. to  
15 RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292  
16 (“Response”). Verizon respectfully submits that no party will be prejudiced by the acceptance of  
17 this technically late-filed pleading, and it should be accepted for the reasons identified below.

18  
19 Verizon originally filed the Response over the signature of Gregory M. Romano, General  
20 Counsel of Verizon Northwest Inc. (the “Initial Response”). While technically deficient for the  
21 reasons identified below, the Initial Response was otherwise timely.<sup>1</sup> Earlier this week,  
22 Commission staff informed Verizon that the Initial Response would be rejected because Mr.  
23 Romano is not yet a member of the Oregon Bar and had not sought leave to participate in the  
24 proceeding *pro hac vice*. The attached Response, signed by the undersigned counsel of record  
25 for Verizon, adopts the arguments made in the Initial Response without change. All parties have

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<sup>1</sup> Indeed, Verizon notes that in a similarly timely filing, Qwest Corporation and Malheur Home Telephone Company expressly joined in Verizon’s Initial Response.

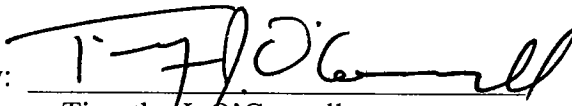
1 had full and complete opportunity to consider those arguments, and make whatever reply may  
2 have been necessary or appropriate under the Commission's rules.

3 Additionally, Verizon respectfully requests that the Response be accepted because the  
4 filing of the Initial Response was due only to the exigencies of the circumstances. Specifically,  
5 RCC and USCC did not file their underlying Application for Rehearing and Reconsideration  
6 until after the undersigned had left for a sabbatical on the East Coast and was unavailable  
7 through the months of July and August, 2006. Mr. Romano, who had only been named months  
8 earlier to his position as General Counsel for Verizon's operations, was fully familiar with the  
9 issues identified in UM 1217 and undertook to prepare the Initial Response himself, rather than  
10 involve some other attorney unfamiliar with the docket.

11 Verizon regrets any inconvenience created by these actions, and only seeks to ensure that  
12 the Commission be able to fully consider all views when considering the Application for  
13 Reconsideration. Therefore, in view of the technical nature of the deficiency, and the fact that no  
14 party will be prejudiced, Verizon respectfully requests that the late-filed Response be accepted  
15 by the Commission.

16 Respectfully submitted this 28<sup>th</sup> day of September, 2006.

17 STOEL RIVES LLP

18  
19 By:   
20 Timothy J. O'Connell  
21 Attorneys for Verizon Northwest Inc.

**CERTIFICATE OF SERVICE**  
**UM 1217**

I certify that on September 28, 2006, I served the Motion to Accept Late-Filed Pleading by electronic mail and overnight mail to:

Filing Center  
Public Utility Commission of Oregon  
550 Capitol Street NE, Suite 215  
Salem, OR 97301-2551  
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I further certify that I have this day sent the above-referenced document(s) upon all parties of record in this proceeding by mailing a copy properly addressed with the first class postage prepaid, and by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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22 DATED: September 28, 2006

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Christine F. Zea, Legal Secretary

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6 In the Matter of

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9 Staff Investigation to Establish  
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11 Recertification of Telecommunications  
12 Carriers Eligible to Receive Federal  
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RESPONSE OF VERIZON  
NORTHWEST INC. TO RCC AND  
USCC APPLICATION FOR  
REHEARING AND  
RECONSIDERATION OF ORDER NO.  
06-292

13 The Application for Rehearing and Reconsideration (“Reconsideration Application”) filed by the United States Cellular Corporation (“USCC”) and RCC Minnesota, Inc. (“RCC”) (collectively, “Litigants”) seeking reversal of a key portion of Commission Order No. 06-292 (“Order”) should be denied. The Reconsideration Application is simply a rehash of arguments explicitly rejected by the Commission in the Order regarding the annual reporting requirements imposed on incumbent local exchange company eligible telecommunications carriers (“ILEC ETCs”), such as Verizon Northwest Inc. (“Verizon”). As such, the Reconsideration Application is facially deficient, as it fails to satisfy the prerequisites in the Commission rules that would permit the Commission to reverse its determinations on ILEC ETC reporting.

22 **1. The Reconsideration Application Does Not Satisfy Commission Rules.**

23 Unsatisfied with failed advocacy attempts in this docket to saddle other parties such as  
24 Verizon with inappropriate annual reporting requirements, the Litigants try again in the  
25 Reconsideration Application. This latest attempt violates rules established by the Commission  
26 (OAR 860-014-0095(3), referred to here as the “Reconsideration Rules”) to ensure that it hears challenges to its orders only when such orders are “unjust” or “unwarranted,” the standard for

1 reversal or modification under ORS 756.561. In fact, the Reconsideration Application is exactly  
2 the type of re-litigation attempt that the Reconsideration Rules are designed to preclude.

3 The Reconsideration Rules specify that the Commission may only grant an application  
4 for reconsideration if the applicant establishes: (a) New evidence which is essential to the  
5 decision and which was unavailable and not reasonably discoverable before issuance of the  
6 order; (b) A change in the law or agency policy since the date the order was issued, relating to a  
7 matter essential to the decision; (c) An error of law or fact in the order which is essential to the  
8 decision; or (d) Good cause for further examination of a matter essential to the decision. OAR  
9 860-014-0095(3). The Litigants claim that the Order’s finding on ILEC ETC reporting  
10 requirements satisfies (c) because it is based on errors of law and fact. Reconsideration  
11 Application at 3. Neither error exists.

12 **A. The Order’s ILEC ETC Reporting Requirements Are Not Based on an**  
13 **“Error of Law.”**

14 The Litigants do not even bother to offer an argument in the Reconsideration Application  
15 about the alleged error of law, relegating that claim to a half-sentence in the Conclusion. The  
16 conclusory sentence makes the unsupported allegation that the Commission “ignores the federal  
17 legal standard that it must satisfy in order to certify annually that ILEC ETCs have expended and  
18 intend to spend universal service support ‘only for the provision, maintenance, and upgrading of  
19 facilities and services for which the support is intended’.” Reconsideration Application at 11.  
20 Perhaps the Litigants do not dwell on this alleged error of law because it was specifically  
21 rejected by the Commission in the Order. Order at 16-17 (noting, before rejecting the position,  
22 that “RCC and USCC argue[] that the same reporting requirements should apply to both ILECs  
23 and competitive ETCs because reports already filed do not contain critical information regarding  
24 exactly how universal service support was used.”). A party, however, may not rely on legal  
25 arguments already rebuffed by the Commission to support an application for reconsideration.  
26 *See, e.g., In re Portland General Electric Co., UM954 & UM958, Order No. 00-308 (2000)*  
(denying arguments raised and considered previously because they “provide[] no new legal or

1 historical basis for review.”); *May v. Portland General Electric Co.*, UC 196, Order No. 92-1769  
2 (1992) (denying legal arguments because they were raised and considered previously).  
3 Accordingly, the Commission need not even entertain Litigants’ claim of an alleged error of law.

4         Moreover, the legal argument raised by the Litigants was rejected by the Commission  
5 because it was wrong. It still is. The Litigants appear to be unhappy because they face a specific  
6 reporting requirement not imposed on ILEC ETCs. Yet such sour grapes do not translate into  
7 legal error. To the contrary, the legal sufficiency of the “Annual Recertification Requirements”  
8 established by the Commission to apply to ILEC ETCs (*See* Order, Appendix A, Pages 4-6) must  
9 be analyzed on its own. The Commission developed these requirements in a heavily litigated  
10 docket that included an evidentiary hearing, and did so over objections of ILEC ETCs (including  
11 Verizon) that the reporting requirements were excessive and/or not contemplated by federal  
12 universal service rules. *See, e.g.*, Opening Post-Hearing Brief of Verizon Northwest Inc. at 11-  
13 12 (arguing that the Commission should not collect any certification information from carriers  
14 receiving funding only through the Interstate Access Support (“IAS”), for which no state  
15 commission certification to the FCC is required).<sup>1</sup> In fact, the Annual Recertification  
16 Requirements applicable to ILEC ETCs include requirements that specifically address the “Use  
17 of support funds” (Section 7), the stated concern of the Litigants. There is no “error of law” in  
18 the Commission’s determination that if the ILEC ETCs comply with the Annual Recertification  
19 Requirements developed after a fully litigated docket, the Commission will be able to certify  
20 whether federal universal service funds are and/or will be expended by ILEC ETCs for intended  
21 purposes.

22         That the Litigants face a requirement to provide a “build-out” plan does not render the  
23 Commission’s certification requirements on ILEC ETCs for the “Use of support funds” an “error  
24 of law.” There is no legal requirement that all carriers face the same requirements, and in fact,  
25 \_\_\_\_\_

26 <sup>1</sup> Verizon stands by its legal arguments on the impropriety of imposition of reporting  
requirements, but declined to seek reconsideration given the Commission’s rejection of those  
arguments.



1 the Litigants state expressly that they are not seeking as much. Reconsideration Application at 5  
2 (“Applicants do not contend that ILEC ETCs should be required to submit a two year network  
3 improvement plan as part of the annual recertification filing.”). Nonetheless, the Commission  
4 explained in the Order why a build-out plan required of CETCS was not required of ILEC ETCs:  
5 “because their USF support is not expressly provided to build out their networks.” Order at 16.  
6 The Commission made that logical and legal determination after a completed docket that lasted  
7 almost a year, included an evidentiary hearing, and was fully briefed by sophisticated counsel.  
8 In any event, there is no basis to agree with the Litigant’s unsupported conclusory statement that  
9 the ILEC ETC reporting requirements are based on an “error of law” that would require  
10 modification to the Order.

11 **B. The Order’s ILEC ETC Reporting Requirements Are Not Based on an**  
12 **“Error of Fact.”**

13 The Litigants claim that the Annual Reporting Requirements imposed on ILEC ETCs are  
14 based on the “mistaken ‘fact’ that ILEC ETCs already submit detailed cost studies to the  
15 Commission that support investments made under universal service fund requirements.”  
16 Reconsideration Application at 6. There is no such “mistaken fact.” Indeed it is a bold assertion  
17 to claim, as the Litigants do here, that the Commission is “mistaken” or unaware of the types of  
18 information and cost studies that it receives from ILECs. As was fully briefed in the docket, it is  
19 the Litigants that seem to lack an understanding of the depth of the Commission’s regulatory  
20 oversight of incumbent providers such as Verizon. *See, e.g.*, Opening Post-Hearing Brief of  
21 Verizon Northwest Inc. at 10. The Commission’s recognition of its heavy oversight over ILECs,  
22 and the lack thereof for wireless carriers, is not new. *See, e.g.*, Opening Post-Hearing Brief of  
23 Verizon Northwest Inc. at 9-10 (quoting the Commission’s conclusion in its June 2004 order in  
24 UM 1083 that “ILEC[s] designated as ETCS currently file extensive reports with the  
25 Commission as part of their regulated incumbent status”). Moreover, the Commission heard  
26 testimony on this matter during the hearing and reached the logical conclusion that “[t]o

1 eliminate duplicative filing requirements, wireline ILECs that file reports with the Commission  
2 may refer to those in lieu of a similar reporting requirement for ETCs.” Order at 16-17.

3 The Litigants attempt to confuse the Commission’s determination on this point by,  
4 among other things, ascribing to it the contentions of the parties.<sup>2</sup> Yet the Commission’s  
5 determination was relatively straightforward: where an ILEC is already required to provide the  
6 Commission with particular reports, it may refer to the filed reports to satisfy the Annual  
7 Recertification Requirements rather than reproduce the information. The concept was  
8 implemented in specific places throughout the Annual Recertification Requirements in Appendix  
9 A. *See, e.g.*, 2.2. (“Wireline carriers that file service quality reports to the PUC: reference  
10 reports filed for primary held orders over 30 days”); 6.2.2 (“Wireline ETCs that file PUC trouble  
11 reports: reference filed trouble reports.”). Thus, with regard to the specific types of information  
12 that the Commission determined were already filed by the ILEC in another report, the  
13 Commission decided that a report reference, rather than reproduction, was all that was required.

14 The Litigants also try to confuse the determination made by the Commission on avoiding  
15 redundancy in reproducing reports with the Commission’s separate finding (discussed *supra* in  
16 Section 1.A) that ILEC ETCs need not provide a “build-out” plan by addressing those two  
17 determinations interchangeably. In any event, there was no “error of fact” relied upon by the  
18 Commission in the reporting requirements it imposed on ILEC ETCs in the Order. The  
19 Commission determined reasonably based on the facts presented in the docket that: (i) with  
20 regard to specific information that was included in other ILEC reports, the ILEC could simply  
21 refer to the other report rather than reproduce the information and (ii) an ILEC ETC is not  
22 required to provide a build-out plan because USF support for ILEC ETCs is not expressly  
23 provided to build out their networks.

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<sup>2</sup> For example, the Reconsideration Application omits introductory phrases such as “[t]hese parties contend that” in quoting Order statements. *See* Reconsideration Application at 6-7. The selective omissions give the impression that the quotations are from the Commission directly rather than a description of the respective party positions.

1 **2. The Litigants’ Rhetorical and General Policy Arguments Should Not Be**  
2 **Considered.**

3 Having failed to establish errors of law or fact, the Litigants resort to a number of  
4 rhetorical and policy arguments that have no place in a reconsideration application. For  
5 example, the Litigants argue that without requiring more information from ILEC ETCs, the  
6 Commission will be unable to tell whether universal service funding is being used “to pay  
7 dividends to shareholders or members” or toward “paying family members or friends for  
8 consulting or other services.” Reconsideration Application at 8. The Litigants, however, offer  
9 no explanation as to how having ILEC ETCs file the same reports as the Litigants would expose  
10 such hypothesized actions. In fact, the Commission would be better poised through its  
11 regulatory oversight to detect such inappropriate behavior by ILECs than it would be with regard  
12 to the Litigants, even with their ETC reports. Thus, rhetoric about such hypothesized activities  
13 provides no plausible ground on which the Commission could grant reconsideration.

14 The Litigants also cite to a policy study that is not included in the record of this docket.  
15 Reconsideration Application at 9. Under OAR 860-014-009(3)(a), the study would have to  
16 constitute “new evidence which is essential to the decision” to be considered by the Commission  
17 at this point. The lengthy report, however, is a general critique of the entire universal service  
18 system and thus is not essential – and barely even relevant – to the Commission’s decision on the  
19 annual reporting requirements it imposes on ILEC ETCs.<sup>3</sup> Thus, the report does nothing to  
20 advance the insufficient arguments set forth in the Reconsideration Application, and the  
21 Commission need not take “notice” of it, as requested by the Litigants.  
22  
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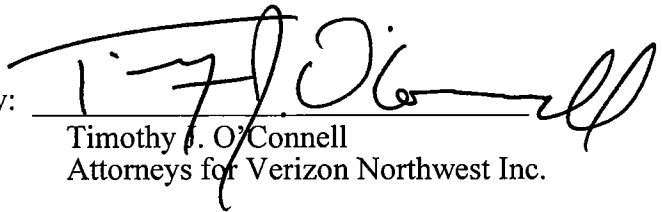
25 <sup>3</sup> The Reconsideration Application (at footnote 26) notes that the report was circulated by the  
26 Commission to the SB 17 Task Force. Circulating a general policy report of this type to such a  
body examining broad telecommunications policy issues makes sense; including it in a  
reconsideration application of specific reporting requirements already adopted by the  
Commission does not.

1 **CONCLUSION**

2 The Reconsideration Application reiterates arguments rejected by the Commission in this  
3 docket. It does not satisfy the Commission's Reconsideration Rules, and thus should be rejected.

4 Dated this 28<sup>th</sup> day of September, 2006.

5 STOEL RIVES LLP

6  
7 By:   
8 Timothy J. O'Connell  
9 Attorneys for Verizon Northwest Inc.

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**CERTIFICATE OF SERVICE  
UM 1217**

I certify that on September 28, 2006, I served the Response of Verizon Northwest Inc. to RCC and USCC Application for Rehearing and Reconsideration of Order No. 06-292 by electronic mail and overnight mail to:

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DATED: September 28, 2006

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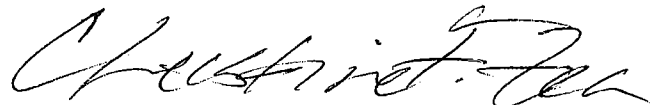
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